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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th February 2024

S.R.O. No. 101/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 8th December 2023 passed in the I.D. Case No. 18 of 2015, by the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Managing Director, Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska, Dist. Ganjam and (1) Bangali Badatya, (2) Panchanan Gouda, (3) Babaji Nayak, (4) Damodar Nayak, (5) A. Diban Reddy, (6) Santosh Sethi, (7) Sudam Mahanty, (8) Ramesh Chandra Nahak, (9) Sima Patra, (10) K. Ganesh Patra, (11) Sanjay Biswal, (12) Santosh Gouda, (13) Gadadhar Swain, (14) Santosh Kumar Nayak, (15) A. Abhimanyu Patra, (16) Bideshi Gouda, (17) Ganesh Nayak, (18) T. Santosh Patra, (19) Mochiram Gouda, (20) Nikunja Bhanja, (21) Pradeep Kumar Barik, (22) Subash Chandra Nahak, (23) Ramesh Chandra Parida, (24) Pitabas Nahak, (25) Sanatan Mahanty, (26) Simanchal Nahak, (27) Krushna Chandra Lenka, (28) Sudarsana Jena, (29) Dandapani Swain, (30) A. Simanchal Reddy, (31) N. Dandapani Patra, (32) P. Jagannath Patra, all are represented through their Vice-President, Aska Co-operative Sugar Industries Labour Union, Nuagaon, P.S. Aska, Dist. Ganjam was referred to for adjudication is hereby published as in the schedule below : —

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 18 of 2015

Dated the 8th December 2023

Present :

Shri Bidyadhar Prusty, M.A., LL.M.,
Presiding Officer,
Labour Court, Jeypore.

Between :

The Managing Director,
Aska Co-operative Sugar Industries Ltd.,
Nuagaon, Aska, Dist. Ganjam.

. . . First Party—Management

Versus

(1) Bangali Badatya, (2) Panchanan Gouda, . . . Second Party—Workmen
 (3) Babaji Nayak, (4) Damodar Nayak,
 (5) A. Diban Reddy, (6) Santosh Sethi,
 (7) Sudam Mahanty, (8) Ramesh Chandra Nahak,
 (9) Sima Patra, (10) K. Ganesh Patra,
 (11) Sanjay Biswal, (12) Santosh Gouda,
 (13) Gadadhar Swain, (14) Santosh Kumar Nayak,
 (15) A. Abhimanyu Patra, (16) Bideshi Gouda,
 (17) Ganesh Nayak, (18) T. Santosh Patra,
 (19) Mochiram Gouda, (20) Nikunja Bhanja,
 (21) Pradeep Kumar Barik, (22) Subash Chandra Nahak,
 (23) Ramesh Chandra Parida, (24) Pitabas Nahak,
 (25) Sanatan Mahanty, (26) Simanchal Nahak,
 (27) Krushna Chandra Lenka, (28) Sudarsana Jena,
 (29) Dandapani Swain, (30) A. Simanchal Reddy,
 (31) N. Dandapani Patra, (32) P. Jagannath Patra,
 All are represented through their Vice-President,
 Aska Co-operative Sugar Industries Labour Union,
 Nuagaon, P.S. Aska, Dist. Ganjam.

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Shri L. M. Das, A/R	. .	For the Workman
Shri K. N. Samantray, Advocate	. .	For the Management
Date of argument	. .	30-11-2023
Date of award	. .	08-12-2023

AWARD

The matter arises out of a reference submitted by the Appropriate Government under Sections 10 & 12 of the Industrial Disputes Act, 1947 (for brevity herein after referred as I.D. Act, 1947) in the matter of the industrial dispute between both the parties.

1. Brief facts of the case of the 2nd Party Workmen is as follows:

The 2nd Party Workmen have averred that the Aska Co-operative Sugar Industries Ltd. (ACSI), Aska is a Public Sector undertaking and is controlled by the State Government. It has its own Bye-Laws to transact its business and has its own Standing Orders to regulate the service conditions of its employees. It is basically engaged in manufacturing of sugar product during its crushing season. It has deployed as many as 900 workmen ordinarily in a day including in its Distillery Plant. The 2nd party workmen, namely (1) Bangali Badatya, (2) Panchanan Gouda, (3) Babaji Nayak, (4) Damodar Nayak, (5) A. Diban Reddy, (6) Santosh Sethi, (7) Sudam Mahanty, (8) Ramesh Chandra Nahak, (9) Sima Patra, (10) K. Ganesh Patra, (11) Sanjay Biswal, (12) Santosh Gouda,

(13) Gadadhar Swain, (14) Santosh Kumar Nayak, (15) T. Abhimanyu Patra, (16) Bideshi Gouda, (17) Ganesh Nayak, (18) T. Santosh Patra, (19) Mochiram Gouda, (20) Nikunja Bhanja, (21) Pradeep Kumar Barik, (22) Subash Chandra Nahak, (23) Ramesh Chandra Parida, (24) Pitabas Nahak, (25) Sanatan Mahanty, (26) Simanchal Nahak, (27) Krushna Chandra Lenka, (28) Sudarshan Jena (29) Dandapani Swain, (30) A. Simanchal Reddy, (31) N. Dandapani Patra, (32) P. Jagannath Patra are employed in the Industry of the 1st party management regularly during crushing season to produce sugar. The 2nd party workmen are represented through the Vice-President of its registered union, who is also validly operating in the establishment of 1st party management entering even tripartite settlement with the 1st party management to regulate the service conditions of its workmen. It has claimed for regularization of the services of the a forenamed workmen and to bring them into the regular roll of the industry by treating them as the workmen of 1st party management. On raising the dispute the appropriate Government, referred the dispute for adjudication before this court. The union on behalf of the present workman has submitted that the workmen under reference have been continuously working in this industry against the work of perennial nature since the crushing season of 1998-99 and some of them from 2002-03. It further averred that Sl. Nos. 1 to 25 were directly appointed by the management from the 23rd December 1998 on which date the crushing season 1998-99 commenced and subsequently were kept under the name sake contractors, namely N. Babaji Patra, Narasingha Patra and Trinath Mahunta by issuing work orders, dated the 29th December 1998 in a most illegal fashion. Along with these workmen some more direct and regular workmen were also employed who are doing with them same and similar works in the industry since 2003. However, they are paid less wages than the wages paid to those direct workmen doing similar nature of job in the same campus. The 2nd party workmen are entitled to get the same and similar wages and the service conditions at par with the direct workmen. In all respects the workmen involved in the reference are the employees of the 1st party management. But unfortunately, they are subjected to exploitation by not allowing them to avail the similar service condition as are available to the directly appointed workmen of the industry and their rights and benefits to which they are entitled under various social and labour welfare legislation. Casual workers similarly appointed by the management and working similarly with the 2nd party workmen though have been brought under regular establishment of the industry, the claims of the workmen involved in this reference have been overlooked. They further averred that the management of the industry is in habit of changing the Contractors/ agencies periodically. But the 2nd party workmen working in the industry as such are not being changed. The industry is adopting such practice in order to deny the claim of the workmen for their regularization. The 2nd party workmen further submitted that the work which they are doing is supervised, controlled and administered by the management through its Chief Engineer, Senior Manager (Process) and other management Personnel. It is manifestly apparent from various terms and conditions imposed on the so called Contractors/Agencies that the management have the economic and disciplinary control over the workmen named above. As such, in all respect the said workmen are regarded as the employees of the industry. The industry used to induct various Contractors/Agencies who are only name lenders and contracts between them are sham and bogus. The contractors have no role to play in the performance of the work. Everything is controlled and supervised by the management personnel. The 2nd party workmen used to report for duty before Shift Engineer/Chief Engineer of the industry.

There is no valid written contract in between the management and the so called contractors and what contractual documents are made by the management are mere camouflage to deprive the concerned workmen of the benefits available under various labour laws. The only object of the management by keeping them as contractual workmen is to deny their legitimate salary and other benefits as are paid to the regular workers of the Industry. By doing so, the management have flouted the constitutional mandate as enshrined in Article 14 of the Constitution. It is also denial of right to life and livelihood with dignity. They further averred that the 2nd party workmen are regularly employed in Bagasse handling work of the industry and in other jobs as and when required by the management to meet exigencies of business i.e. in firing the boiler, cleaning of dust in the plant, loading & unloading of materials etc. during the crushing seasons which are the integral part of operation of the plant of the industry. Though the a forenamed workmen undertake the vital part of the work of the industry and also bear equal risk and responsibility, they are being arbitrarily denied to enjoy the legitimate fruits from their work. It is the submission of the 2nd party workmen that prior to crushing season 1998-99, there was no contract system to carry out such jobs. It is only thereafter, the works are being managed by the industry management by inducting the so called Contractors/Agencies named above by issuance of work order dated the 29th December 1998 and subsequent orders issued from time to time with all ulterior motives. Since they are in employment of the industry since last 13 to 17 years against the job of permanent and perennial nature, they are legally entitled to be brought into the role of the establishment of the industry. The so called contractors inducted from 1998-99 to till date are mere nominal and name lenders and some of them are also the regular employees of the industry. They do not have any labour license as required under Contract Labour (Regulation & Abolition) Act, 1970, so also the industry has not obtained any registration as required under the Act. So, once it is found that industry management is not the principal employer nor the so called contractors are the licensed contractors, the inevitable conclusion has reached to the effect that the contract is camouflage and workmen are to be treated as of the industry management. It is further averred that there is no difference between the works given to the permanent employees of the cadre of sweeping, cleaning plants dusting of premises and building area, maintenance, flooring etc., as the present workmen. In spite of this fact, they are getting much less salary than the regular employees even doing same and similar type of work in the same campus. The a forenamed workmen are since have done their work for such a pretty long time in the establishment of the management, it can be said that they are fully integrated in the establishment of the industry. In view of their long and continuous work for years together they are entitled to be brought in the regular roll of the establishment.

They further submitted that the Certified Standing Orders of the industry which is the basic document governing the service conditions of its employees does not provide for engagement of contract labourers. So, the so called labour contract must be held to be void and labourers engaged by such name sake contractors are deemed to be the employees of the 1st party management. Since the contract arrangement itself is void being sham bogus and camouflage, prohibition under Section 10A of Contract Labour (R&A) Act, 1970 is unwarranted. The service conditions once made available to an employee could not be altered unilaterally to their prejudice by issuing work order to the a forenamed name sake contractors retrospectively. This is clear violation of Section 9A of the Industrial Disputes Act, 1947. It is further submitted that despite the 2nd party workmen

use to work continuously since last 13 to 17 years, they have not been brought into roll of the industry. They further averred that to employ workman as badalis, casuals and temporaries and to continue them as such for years together with the object of depriving them of the status and privilege of the permanent workers is always condemned as Unfair Labour Practice as depicted in item No.10 of Schedule-V appended to the Industrial Disputes Act, 1947 and commission of such unfair labour practice is prohibited under Section 25T of the Act and such unfair practice could not be allowed to perpetuate in the industry particularly when it is a public sector undertaking.

Their further contention that the 2nd party workmen though are receiving the wages from the authorized agencies, their wages are determined by the 1st party management which ultimately pays to the workmen involving under reference. In spite of change of contractors, neither the workmen were replaced nor were fresh appointments made. All these facts show that the contract is sham, bogus and mere camouflage and 1st party management is the real employer of the present workmen. The Aska Co-operative Sugar Industries is a seasonal industry. According to the staffing pattern approved by the Government there should be 273 workers in the roll of the industry in seasonal cadre as against 22 are only on roll and remaining 251 have fallen vacant in different categories. These workmen are legally entitled to be absorbed against seasonal vacancies lying under the 1st party management.

They further averred that the sugar plant of the 1st party management situates in the restricted area where the 2nd party workmen used to work. The 1st party management have not only control over the entry of the 2nd party workmen into the sugar plant but also have the effective control over their movement inside the plant and disciplinary control over them. Thus under the aforesaid premises the workmen claims that denial of 1st party management to give the status of permanency to the workmen involved in this reference and accepting them as the workers of the contractor but not of the industry and to continue them as such years together with the object of depriving them of the status and privileges of permanent workmen amounts to unfair labour practice as provided in fifth schedule appended to the Industrial Disputes Act, 1947 which is not expected from an instrumentality of the State. Though the aforementioned workmen are repeatedly representing the Management to bring them into the roll of the industry, but unfortunately their requests have been turned down. Rather the 1st party management has victimized the workmen under this reference without allowing them to work in the last crushing season when they claimed permanency in their status. In the aforesaid premises the demand of Aska Co-operative Sugar Industries Labour Union for regularization of services of the aforementioned workmen under this reference is absolutely legal and justified and the said workmen are entitled to be treated as the direct workmen of the 1st party management and are also entitled to be brought under the regular roll of the establishment with same and similar wage and service conditions at par with other direct workers in the roll of the 1st party management from due date.

After filing of show cause by the management, the 2nd party workmen have filed their rejoinder denying the averments of the management. They averred that the Certified Standing Orders of the industry does not provide engagement of contract labours. The establishment of the 1st party management is also not registered under the provisions of the Contract Labour (R&A) Act, 1970. The allegation of the 1st party management that since classification of workers does

not provide, engagement of contract labour, the workers cannot claim for regularization is misconceived. They averred that the engagement of contract labour in absence of provision to do so in the Certified Standing Order is void and such workers engaged on contract basis are regarded as the direct worker of the Principal Employer. They further denied that the 1st party management used to engage the contractor to do the job of petty works for one or two months hardly during the crushing season, but not more than that. In fact, the 2nd party workmen are engaged against the sanctioned posts within the parameter of the approved staffing pattern. Admittedly, the industry is a seasonal one but works are of regular in nature. They further submitted that the 2nd Party workmen even though get their wages from different contract agencies, it is the 1st party management who pays the wages to the said contracting agencies for disbursement among the workers. The 2nd party workmen works for the 1st party management and in between them the so called contractors work as dubious intermediaries only to deprive the workers of availing the benefits from the various labour legislation. Even though the 2nd party workmen and other direct workers are working together in the same campus of the 1st party management, the former are getting just minimum of Rs. 200 per day whereas the latter are getting Rs. 600 per day in average. Such discrimination and disparity in payment of wages among the two category of workers is not sustainable under law. They further denied that industry is making loss. In fact, it was making profit. The financial analysis of both sugar and liquor trading are reflected in a common profit and loss account which shows surplus as a whole and for such surplus, management has released 26% of bonus & incentive to the direct workers. They further averred that the initial recruitment of 2nd party workmen directly by the 1st party management is manifestly apparent on record. The engagement of 2nd party workmen is as per principle and practice prevalent in the industry and within the parameter fixed according to the staffing pattern, approved by the Government.

With the above averments they prayed to answer this reference in favour of the 2nd party workmen and direct the 1st party management to treat the workmen under this dispute as their direct employees and to pay regular wages to them with equal service conditions as applicable to other regular workers of the industry from the date of raising the dispute before the Labour Authorities in the ends of justice.

2. Brief facts of the case of the 1st party management is as follows :

On receipt of notice, the management has entered its appearance and filed its show cause. In its show cause, it averred that the demands of the workmen who claims regularization in service in the industry are not the employees of the 1st party and there was no such master and servant relationship exists at any point time. The 1st party used to engage the contractors to do the job of petty works for the time, one month or two or hardly during the crushing season but not more than that. The contractors are engaged different people according to their choice and such workers receive their wages etc. from the contractors who use to engage them. The 1st party is neither the pay master nor the disciplinary authority or controlling authority in any manner. As such the claim is not sustainable in law. It further averred that the Aska Co-operative Sugar Industries Ltd., Aska is a Co-operative Industry and is an incorporated member under Odisha Co-operative Societies Act. It is engaged in manufacturing of sugar and so also in distillery business. For smooth functioning of the business of the industry, the 1st party decides to entrust some of the work to the contractors

following due procedure as per the requirement from time to time. The contractors so entrusted for the jobs to do, use to deploy their own workforce to undertake the given job. The 1st party has no direct link to the labourers engaged by the contractors. Such of the labourers are never recruited by the 1st party. During the present era of stabilization and modernization hiring of workforce through contractors and outsourcing becomes inevitable by the industries to ensure sound production and discipline. The bagasse handling work is an integral part of the working process of the plant during the crushing of cane and for its efficient management, it was directed to get the said work done through the contractors from the year 1998-99 and accordingly, the works in the bagasse yard of the industry are being entrusted to different contractors by tender process in each and every year. The service condition of the workers of the industry and those of contract labourers cannot be enacted under the law. Fact remains upon that the 1st party engaged different contractors possessing valid license as provided under law under valid agreement. Hence, the labourers working under contractors cannot claim regularization under the 1st party management. It further contended that the averments of the 2nd party that they are direct employees of 1st party is not true, rather they are all contract labourers engaged by the contractors in one crushing season on daily wages basis and are not completed 240 days of engagement of their work preceding of 12 calendar months or in any one of the year during the period of their engagement in order to come under the definition of 'workman' under Section 2(S) of I.D. Act, 1947 and for the reason the 2nd parties are not coming under the definition of workman and for that the present case is not maintainable before this Court. It further contended that they were not working continuously in the industry against in any perennial nature of work since the crushing season 1998-99 and some of them from 2003-04. They never appointed by the 1st party directly in its establishment at any point of time. It further submitted that all such persons are engaged by the contractors only and all such engagements are all temporary in nature and since the contractors are not made as necessary parties to the present dispute and for that the present case is not maintainable on the point of non-joinder of necessary party. The contention that the engagement of contractor is being considered by the 1st party as per the norms fixed and the management has the right to direct the contractor to take up the jobs as per specifications. The 1st party has the right to supervise the work done by each of the labourers and hence it does not mean that such labourers can be treated as a regular employee. The contract labourers used to do their jobs, for which the contractors were engaged by the 1st party and not beyond that. It further contended that the 1st party management, for different work is free to adopt the methods to accomplish the work to be done in the establishment as per the guidelines of the authorities and accordingly engaged the contractors which are within the direction of law. There is no record available with the 1st party as regards engagement of the present claimants since last 13 to 17 years and hence there is no basis for regularization in service. Moreover, there is no permanent post available with the 1st party management, as the unit is running in loss and could not be able to meet its day to day expenses, in such of the condition, there is ban for any further appointment, is imposed on the 1st party by the authority. The Standing Order of the industry is certified by the Appropriate Authority stipulates who can be a workman as classified in Clause 2 and no body beyond that can claim to be a workman. Hence the claim of 2nd party that they are workmen, neither legal nor justified. It further contended that the 1st party makes payment of wages as decided in accordance with the minimum wages fixed by the State

Government from time to time and the claim of the 2nd party that their wages are fixed by the management is not true. It averred that even the wages are not paid directly but through the labour contractors. So the claimants are purely contract labourers working under the labour contractors and there is no such master and servant relationship and hence the claims are neither legal nor justified. The 1st party is a registered society under the control of the State Government and hence is liable to be guided under the provisions of law and there is no violation of law in any kind. It contended that the 1st party has never victimized the claimants at any point of time and the claim of practice of unfair labour practice does not arise since the claimants are not under the control of the 1st party. Hence it prayed to reject the reference in the interest of justice.

3. Schedule of the reference :—

(a) “Whether the demand of the Vice-President, Aska Co-operative Sugar Industries Labour Union, Nuagam, Aska, Ganjam for regularization of service of (1) Bangali Badatya, (2) Panchanan Gouda, (3) Babaji Nayak, (4) Damodar Nayak, (5) A. Diban Reddy, (6) Santosh Sethi, (7) Sudam Mahanty, (8) Ramesh Chandra Nahak, (9) Sima Patra, (10) K. Ganesh Patra, (11) Sanjay Biswal, (12) Santosh Gouda, (13) Gadadhar Swain, (14) Santosh Kumar Nayak, (15) T. Abhimanyu Patra, (16) Bideshi Gouda, (17) Ganesh Nayak, (18) T. Santosh Patra, (19) Mochiram Gouda, (20) Nikunja Bhanja, (21) Pradeep Kumar Barik, (22) Subash Chandra Nahak, (23) Ramesh Chandra Parida, (24) Pitabas Nahak, (25) Sanatan Mahanty, (26) Simanchal Nahak, (27) Krushna Chandra Lenka, (28) Sudarshan Jena (29) Dandapani Swain, (30) A. Simanchal Reddy, (31) N. Dandapani Patra, (32) P. Jagannath Patra by the Management of Aska Co-operative Sugar Industries Ltd., At/P.O. Nuagam, P.S. Aska, Dist. Ganjam is legal and/or justified ?

(b) If not, what relief the workman is entitled to ?

4. In order to establish their case, the 2nd party workmen have examined as many as twenty-eight (28) witnesses on their behalf and also relied on several documentary evidences. On the other hand, the management has examined one witness on its behalf as M.W. No. 1. Apart from the oral evidences, it also relied on several documentary evidences.

5. Learned Authorised Representative (A/R) for the workmen Shri Dash submitted that the present workmen are directly employed by the management in the year 1998 and some of them were engaged in the year 2003. But subsequently they are put under the name sake contractors by violating the provisions of S. 9A of I.D. Act, 1947. He further submitted that there is no provision in the Certified Standing Order of the management for engagement of contractors and contract labourers. So the management has violated the Rules/ Provisions of its Standing Order, which is not tenable under law. He further submitted that the management witness, examined as M.W. 1 has also admitted that the workmen are working since 1998. He further submitted that the present workmen were working under the direct supervision and control of the offices of management as the other regular employees were working. He further submitted that the present workmen were working under the bagasse handling work, which is an important part of the function of the establishment. Without the contribution of the present workmen, the operation of the establishment is not passible and hence an essential nature of job, the workmen were performing. This fact has also admitted by the witness of management M. W. 1 during his cross- examination. He further

submitted that there were disciplinary control and the security of the workmen bestowed on the officers of the management, but not in the hands of the so called contractors, since they were working in the sensitive security region of the establishment. He further submitted that the wages of the workmen were fixed by the management and paid accordingly, which shows its financial control. He further submitted that the management has took the attendance of workmen and managing the attendance registers. But the management has failed to adduce any such registers, which is under its control during hearing of this case. He further submitted that although the name sake contractors were changed, but the workmen/labour were the same through the years together. Not only this, he submitted that the present workmen were paid less wages than the wages of regular employees for performing the same nature of work, which amounts to unfair labour practice. He further submitted that neither the management nor the so called contractors were registered as required under the provisions of the Contract Labour (Abolition & Regulation) Act, 1970 (CLARA). Even some of the so called contractors are permanent employees of the Management Company. M.W. 1 has admitted that there is no provision in the Certified Standing Orders for engagement of Contractors out of its regular employees. This shows that the management has violated the norms of CLARA, 1970. The so called contractors have no valid contract license to engage contract labourers. There is no contract agreements between the management and the so called contractors. There was no tender floated for the engagement of contractors for this purpose. Not a single piece of documents has filed by the management to that effect. Thus he submitted that the so called work order issued in favour of the so called contractors, for engagement of contract labourers are only sham documents, in order stifle the legitimate right of the present workmen. He further submitted that there are sufficient vacancies in the establishment to absorb the present workmen, who are having a suitable and requisite experience of more than 15 years. So he submitted to pass necessary orders for regularization of the present workmen. In support of his averments, he placed his reliance in the following decisions:

Secretary, H.S.E.B Vs. Suresh & Ors. AIR 1999 (SC) 1160, Hindustan Lever Ltd. Vs. Hindustan Lever Employees Union & Anr. (2001) LLJ 861, Sankar Mukharjee & Ors. Vs. Union of India (UOI) & Ors. AIR 1973 (SC) 2650, Paradip Port Trust Vs. Their Workmen & Ors. (2004) Supp Ori Law Review 753, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode & Ors AIR 1978 (SC) 1410, Bhilwara Dughd Sahakari S. Ltd. Vs. Vinod Kumar Sharma (dead) by LRs & Ors. AIR (2011) SC. 3546, Silver Jubilee Tailoring House & Ors. Vs. Chief Inspector of Shops and Establishments & Anr. AIR (1964) SC37, Basti Sugar Mills Ltd. Vs. Ram UJagar & Ors. AIR(1964) SC 355, M/s ICICI Prudential Asset Management Co. Ltd. Vs. Union of India & Anr. W.P.(C) 13663/2009 decided on the 7th September 2011, FCI, Haryana Region Vrs. The Presiding Officer, Central Govt. Ind. Tribunal and Anr. (1987) 2 SLR 678, Gujrat State Road Transport Corporation Vs. Workmen of State Transport Corporation (1999) 2 CLR 1033, Kukadi Irrigation Project Vs. Waman Bhujbal & Anr. (1994) 68 FLR 639, The General Manager (P&A), Hindustan Petroleum Corporation Ltd. Vs. The General Secretary, General Employee Association, List of Workmen (1-16) and Shri A. A. Lad, Presiding Officer. (CGIT) No. 2 (2010) 3 AIR Bom R 584, Bharat Heavy Electrical Ltd. Vs. State of U.P. & Ors. 2003 (SCW) AIR 3469, S. Shabari Vs. Juhu Vile Parle Gymkhana & Anr. (2002) 2 ALLMR 380, Haryana State Electricity Board Vs. P.O. Labour Court, Rohtak (1996)8 SLR 257, Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda (2010) AIR (SCW) 542, and Indian Farmers Fertilizer Co-operative Ltd. Vs. Industrial Tribunal-1, Allahabad & Ors. (2002) AIR (SCW) 1136.

Learned Counsel for the management Shri Samantray has submitted that since, the workmen are employed under the labour contractors, there is no direct relationship of employer and employee or master and servant relationship between the management and the present workmen. He further submitted that the management, being a Co-operative Society, is regulated by its Bye-Laws and Certified Standing Orders. In the year 1998-99, the management has decided to engage contract labour system to do the certain work of the functioning its establishment. Accordingly contractors were appointed by issuing of work orders for engagement of tractors and labourers for bagasse handling and other works. The said contractors were engaged the present workmen for work of bagasse handling in the establishment of the management. There is no direct payment of wages to the present workmen. The contractors were paid the wages to its labourers after receiving the same from the management. The management never had any control over the present workmen. Since they are contract labourers, they are not workmen as defined under Section 2(s) of the I.D. Act, 1947. Further the said labourers are employed in bagasse handling work, which is seasonal in nature and the work was done hardly for two to six months during crushing season. The present workmen never worked for 240 days in a year, so as to qualify to be the workmen. Merely the present workmen worked under the management, *ipso facto*, cannot say that they are the employees of the management. They are seasonal labourers, employed through their respective contractors and hence their claim for regularization does not arise. He further submitted that there was no question of practice of unfair labour practice as claimed. The wages were paid to the labourers as per the norms of the Government and there is no deviation at all. The labourers cannot claim equal status to that of regular employees of the management. He further submitted that due to financial losses incurred by the management, there were no regular vacancies, which entitled the present workmen to be regularized. He further submitted that the present workmen were never issued any appointment letter for their engagement in the management. Their status was the contract labourers under their respective contractors. He further submitted that there was no violation of any provisions of CLARA, 1970. Thus he submitted that the claim of the workmen are not maintainable under the reference. In support of his submission. He placed his reliance on the following decisions. Dena Nath & Ors. Vs. National Fertilizers Ltd. & Ors. (1992) L.L.J-1289, The workmen of the Food Corporation of India Vs. M/s Food Corporation of India, (1985) II L.L.J.4, Tamil Nadu Civil Supplies Corporation Workers Union Vs. Tamil Nadu Civil Supplies Corporation Ltd. & Ors. (1998) L.L.J. 728, State of U.P. & Ors. Vs. Ajay Kumar (1997) L.L.J. 1204, Kishan Sahakari Chini Mills Ltd. Ghosi & Ors. Vs. Awadhesh Singh (1994) L.L.J. 1067 and Himmat Singh & Ors. Vs. State of U.P. (2000) L.A.B.I.C. 1874

FINDINGS

6. The present reference is the outcome of the industrial disputes raised by the Aska Co-operative Sugar Industries Labour Union, Nuagoan, Aska through its Vice-President, demanding the regularisation of above named workmen. The union averred that the present 32 numbers of workmen were engaged by the 1st party management directly for working in the bagasse handling yard in the sugar factory during crushing seasons and also they were working in the factory in different parts throughout the year, even after the crushing season is over. Therefore, they are the workers, working in a perennial nature of work and hence entitled to be absorbed into the regular roll of the factory. It further contended that the introduction of contract labour system is against the

Certified Standing Orders of the establishment and the contractors were name sake and the contract if any, is bogus and sham, only to deprive the legitimate claim of the present workmen. The management averred that they were working in the factory not directly, but through their contractors and hence they are not the employees of the factory and they are the labourers of their respective contractors. It was further averred that the present persons (workmen) so worked not throughout the year but only during crushing seasons, which is usually ranges for only three to four months in a year and hence, none of them completed 240 working days in a year and hence they are not 'workmen' as per the provision of S. 2(s) of the I.D. Act, 1947. It further contended that they are receiving their wages from their contractors and there is no relationship of servant-master or employees-employer existed between them.

7. In this backdrop of averments, first I have to advert to discuss the status of the present workmen as to whether they are the labourers of the contractors, employed by the management or they are the employees of the management, directly appointed by it? Before going to discuss the factual aspect, give a cursory look at the law settled on the point of contract labour system and its implication in the industrial relationship in the perspective of the present case.

In Hussainbhai, Calicut. (*supra*) the Hon'ble Apex Court in Para. 5&6 has held as under;

"The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefits and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies in genuity. The liability cannot be shaken off."

In Sankar Mukherjee and Ors. (*supra*) the Hon'ble Apex Court in Para. 6 has held as under-

"It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard-Vaccum Refining Co. of India Ltd. Vs. Its Workmen, [1960] 3 SCR 466 and

Catering Cleaners of Southern Railway V. Union of India & Anr., [1987] 1 SCC 700 has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system, which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

In H.S.E.B Vrs. Suresh (*supra*) the Hon'ble Apex Court in Para. 21 has held as under ;

"It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted. that the management witness Shri A. K. Chaudhary also could not tell whether Shri Kashmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised."

In Bhilwara Dugdh Utpadak Sahakari S. Ltd .. (*supra*) the Hon'ble Apex Court in Para. 4&5 has held as under :

"In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited.

However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."

In Food Corporation of India, Haryana Region. (*supra*) the Hon'ble Punjab & Haryana High Court in Para. 11 & 12 has held as under ;

11. The Corporation had feigned total ignorance about the fact as to which person had been employed by the contractor. It has also feigned total ignorance of the fact as to whether contractors engaged by it had possessed the license envisaged by Section 12 of the Contract Labour Act. Such ignorance in our view is unacceptable in the light of the provisions of Section 29 of the Contract Labour Act. The Corporation had by feigning ignorance tried to suppress from the Tribunal facts which must be unfavorable to it.

Every worker, in our view, who works for a principal employer to whom the provisions of Contract Labour Act are attracted, is to be treated as the worker of the principal employer unless two conditions are satisfied:

- (i) That the establishment had secured a certificate of registration for the relevant period; and
- (ii) It had employed contract labour through a licensed contractor.

12. If neither of the conditions is missing then the contract labour employed through the contractor shall be treated to be the “worker” of the employer.”

In the General Manager (P & A), Hindustan Petroleum Corporation Ltd. (*supra*) the Hon’ble Bombay High Court in Para. 58 to 62 has held as under;

58. The evidence also shows that when these employees started working with the petitioner, the contractors did not have the necessary licenses under the Act and the licenses came to be applied for or obtained by the contractors much later on. In Secretary, H.S.E.B. Vs. Suresh and Others etc., it is observed that once the so called contractor was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that so called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the principal employer, on the one hand, the employees, on the other, could be clearly visualized. In the present case, this is one added factor which shows that the contract is sham and bogus as in the present case, the evidence on record shows that none of the contractors had a licence at the relevant time.

59. In Steel Authority of India Ltd. (*supra*), which is a decision by the Constitution Bench of the Supreme Court, it has been held that on issuance of prohibition under notification under Section 10(1) of the C.L.R.A. Act which prohibits employment of contract labour. If the contract is found to be not genuine but mere a camouflage, so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned and if necessary by relaxing the condition.

60. It is not the case of the Petitioner that, they are not concerned at all with the employees involved in the reference. The stand of the Petitioner is that, they are contract workers and since they are not on the establishment of the Petitioner, they cannot be its ‘workmen’. However, the evidence on record shows to the contrary.

61. Mr. Cama also placed reliance on Para. 22 of the decision in the case of Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others. However, this decision has been considered in the case of Hindalco Industries Ltd. In Hindalco Industries Ltd., the Supreme

Court has also considered the fact that the workers who were in employment for a long period of time due to the order made by the Industrial Court and that the continuous employment of the workmen was not voluntary. It was observed that, as (a) the workmen have been employed for long years and despite a change of contractors the workers continued to be employed in, the canteen, (b) evidence on record established the ultimate control of management on the canteen employees. In such case, the Court would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal and the workmen. In the present case also, both these aspects are found very much present. The material on record clearly shows that the activities of the workmen are ultimately controlled by the Company. Thus, considering all the mentioned factors cumulatively, it can safely be said that the Respondents - Workmen are in fact the workmen of the Petitioners - Management. In these circumstances, the Tribunal was perfectly right in arriving at the conclusion that the contract is nothing but a paper agreement and granting relief.

62. The Tribunal has carefully considered the evidence and material on record. The award is based on the evidence and the material on record and hence, it does not call for any interference. Writ Petition is dismissed. No order as to costs."

8. The contention of the Union is that the contract between the management and the so called contractors, if executed, is said to be sham and bogus and is camouflage documents, only to deprive the legitimate rights of the present workmen. The learned A/R of the Union has submitted that the Certified Standing Orders, approved by the Appropriate Authority is the cardinal document, which governs the functioning of the 1st party managements, being a semi-govt. organization registered under the provision of the Orissa Co-operative Societies Act, 1960. The photocopy of the Certified Standing Orders of the 1st party management is marked as Ext. 28. He submitted that there is no provision in the said standing orders for engagement of contractors to engage the contract labourers in the establishment. So the management has violated of the provisos of its Standing Orders. He further submitted that there was a bipartite agreement executed between the management and Union, where the 1st party agreed not to engage contract labourers in its establishment in any form. The photocopy of the said agreement/settlement dated the 15th December 2000 is marked as Ext. 28. He submitted that the 1st party management has also violated the terms of the said settlement. He further submitted that neither the 1st party management has registered under Section 7 of the CLARA, 1970 to appoint contractors to engage contract labourers in its establishment nor the so called contractors obtained the license from the appropriate Authority under Section 12 of the Act, 1970 to engage the present workmen for the 1st party, when the system was first introduced in 1998. He further submitted that no such contract was filed to that effect that there was agreement of contract executed between the 1st Party and the so called contractors. He further submitted that no resolution of the management has produced to show that the decision was taken by it to introduce the contract labour system in its establishment. On perusal of the case record, it is found that the management has failed to adduce any such document, where a resolution was taken to introduce contract labour system into the establishment as contended by it. It also failed to adduce any document or evidence to show that if any tender was

floated for engagement of contractors, which it averred in its show cause. Similarly, no document was produced to establish that the so called contractors were true bidders and obtained the tenders as per the norms. It also failed to adduce any contract which were executed between it and the contractors. M.W. No.1 during cross-examination admitted that no such document was filed to prove the above facts. Mere filing or issuing of work orders in favor of name sake contractors, is not enough to hold that the said contractors appointed legally by the management. Even, it is forthcoming that some of the contractors are the regular employees of the management. It appears that the management has violated the, terms of its Certified Standing Orders by introducing and engaging the contract labour system without any authority. No transparency was maintained by the management while awarding the contract, if, any. However some license of the contractors are produced, which are of the year 2003 onwards. But no such license has produced of the contractors, when the system was introduced in the year 1998. It appears that the management has engaged the present workmen in its establishment arbitrarily, without following due procedure. The management also violated the provision of S.7 and S. 12 of the CLARA, 1970. Learned counsel for the management relying on the decision of the Hon'ble Apex Court in the case Dena Nath (*Supra*) has submitted that, the non-compliance of any provisions of the CLARA, 1970, would liable for criminal prosecution. He submitted that only on the ground that non-compliance of the provisions of CLARA, 1970 *per se* the contract and work orders are sham and bogus. Learned A/R for the union has submitted that the decision of Dena Nath (*supra*) has been overruled by the Hon'ble Apex Court by the Constitution Bench in the case of Steel Authority of India Ltd. Vrs. National Water Front Workers Union & Ors. AIR 2001 SC 3527.

The Hon'ble Apex Court in the case of Steel Authority of India Ltd. V. National Water Front...(supra) has held that ;

An analysis of the cases, discussed above, shows that they fall in three classes; (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was. ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract labour would indeed be the employees of the principal employer.

In a three-Judge Bench decision of this Court in Hussain bhai's case (*supra*), the petitioner who was manufacturing ropes entrusted the work to the contractors who engaged their own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment. On reference of that dispute by the State Government, they succeeded in obtaining an award against the petitioner who unsuccessfully challenged the same in

the High Court and then in the Supreme Court. On examining various factors and applying the effective control test, this court held that though there was no direct relationship between the petitioner and the respondent yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the management not the immediate contractor. Speaking for the Court, Justice Krishna Iyer observed thus:- Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38,39,42,43, and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances..... Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The Managements adventitious connections cannot ripen into real employment. This case falls in class (ii) mentioned above.

It was further held that;

(5) On issuance of prohibition notification. under Section 10(1) of the CLRA . Act prohibiting employment' of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service; the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para. 6 hereunder.

The Hon'ble Court further discuss the ratio decided in the case of Basti Sugar Mills case (*supra*) in the following terms;

The decision of the Constitution Bench of this Court in Basti Sugar Mills case (*supra*) was given in the context of reference of an industrial dispute under the Uttar Pradesh Industrial Disputes Act, 1947. The appellant Sugar Mills entrusted the work of removal of press mud to a contractor who engaged the respondents therein (contract labour) in connection with that work. The services of the respondents were terminated by the contractor and they claimed that they should be re-instated in the service of the appellant. The Constitution Bench held, The words of the definition of workmen in Section 2(z) to mean any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word employer included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between employer and workmen. It was with a

view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (iv) of Section 2(i). The position thus is : (a) that the respondents are workmen within the meaning of Section 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press mud which is ordinarily a part of the industry. It follows therefore from Section 2(z) read with sub-clause (iv) of Section 2(i) of the Act that they are workmen of the appellant company and the appellant company is their employer."

9. The Hon'ble Apex Court after carefully gone through and having an elaborate discussion, has declined to interfere in the decision taken by the Hon'ble High Court of Patna in C.A.No.6023/2001@SLP(C)No.19391199. The said case is identical to the facts of this case. It was held as under;

"C.A.No. 6023/2001@SLP(C) No. 19391/99 This appeal arises from the judgment and order dated the 19th August 1999 of the High Court of Patna, Ranchi Bench, Ranchi, in L. P. A. No. 214/99 (R). The Division Bench declined to interfere with the order of the learned Single Judge dismissing the writ petition filed by the appellant. The case arose out of the award dated October 3, 1996 passed by the Central Government Industrial Tribunal No.1 directing the appellant to absorb the contract labour. The Tribunal, on appreciation of the evidence, found that the contract labourers were not regularised to deprive them from the due wages and other benefits on par with the regular employees under sham paper work by virtue of the sham transaction. It was also pointed out that the workmen in other coal washery were regularized. The claim of the appellant that the washery was given to the purchaser was not accepted as being a sham transaction to camouflage the real facts. The learned Single Judge on consideration of the entire material confirmed the award and the Division Bench declined to interfere in the LPA. We find no reason to interfere with the order under challenge. The appeal is, therefore, dismissed with costs."

10. Even though the Apex Court has not expressly overruled the said decision in Dena Nath (*supra*) but by necessary implication, the ratio have no effect at all after the decision of the; Constitution Bench in SAIL (*supra*). So the submission of the learned counsel-for the management that non-compliance of the provisions of CLARA, 1970 has only criminal liability, has no leg to stand.

11. The main thrust of the Management that the present workmen are the contract labourers, who were worked under different contractors. As discussed above, neither the Management was registered nor was any license issued to the contractors when the system was adopted in 1998. The fact interesting here to mention that the management has urged that basing on the contract, the work orders were Issued to different contractors for engagement of contract labourers. But the irony is that no such document has been produced by it before this court. No document of contract has yet to see the light of the day. In absence of any contract, the validity of the said work orders vide Ext. 1 to 27, having no force at all. If infact, any contract was signed between the contractors and the management, the same should be produced to unravel the suspicion hovering around. But the management has utterly failed to produce the same. So an adverse inference is drawn against the management and, it seems that the management is trying to conceal the real truth.

12. As discussed above, many of the contractors are the permanent or temporary employees of the management. Then how they become the contractors, while in the service of the managements, the allegation of the Union, has not been clarified by the management. Further the witnesses of the workmen have deposed during evidence that no contractor have ever visited their place of work. The management has not produced any contrary evidence to discard the said claim of the workmen. Further the management has not established the fact that the contractors have requisite know-how to deal with the bagasse handling plant, when on perusal of the case record, it is found that the management has failed to establish the above requirements, the irresistible conclusion that the contractors, so employed by the management are nothing but the name sake contractors and the paper works, like work orders, are nothing but paper arrangements. Another factors, which need to be considered, when the witness of the management, examined as M. W. No. 1, has admitted that the present workmen were working in the bagasse yard from the 23rd December 1998. The work orders vide Ext. 1&2 have issued on the 29th December 1998 and the same was come into effect from the 23rd December 1998. If the management claimed that after the decision was taken by the Managing Committee to engage contract labourers through contractors, and thereafter work orders were issued, what prompted the management, made the work orders to have retrospective effect from the 23rd December 1998. The management has failed to clarify the said aspect. It appears that in order to put these workmen, who are working since the 23rd December 1998, under the contractors, it has put the retrospective clause in the work orders vide Ext. 1&2. This act of the management is appears to be illegal and it has tried to deprive the legitimate claim of the workmen working since the 23rd December 1998, who were presumed to be engaged by the management directly, when the system of contract labour was not in vogue.

13. So in view of the above analysis and relying on the principles laid down by the Hon'ble Apex Court and different High Courts, in the cases mentioned above, this court come to the conclusion that the work orders or contracts, if any, are sham and bogus, a camouflage document, only to deprive the legitimate claim of the present workmen. The so called contractors are nothing but the agents of the management and only name sake, become an instrumentality in the hands of the managements. There exists the relationship of master and servant or employer and employee between the Management and the 2nd Party workmen.

14. The Union averred that workmen mentioned in Sl. 1 to 25 were directly engaged by the management since the 23rd December 1998 and the rest of seven numbers of workmen were engaged directly by management since 2003. On perusal of the case record, there placed no material or evidence by the workmen showing that they were directly engaged by the management. Even during cross examination of the present workmen, some of them categorically stated that no appointment letter were issued to them by the management. Learned AIR has submitted that during cross examination in Para. 82 M.W-1 has categorically admitted that the workmen were working in bagasse yard since the 23rd December 1998. There is no dispute that the present workmen were working in the establishment. Now the bagasse arises as to how they were working in the establishment, which is in the exclusive control of the management. How they entered into the establishment for work in the bagasse yard since the 23rd December 1998, the fact has not been clarified by the management. If they were not properly appointed, then how they were allowed

to work in the establishment. There must have some materials by which they were allowed to work in the establishment. But no such material or document has been produced by the management. Even the plea taken by the management that no such document is available in respect of the present workmen. On analysis of the evidence of M.W No. 1, it is found that the establishment is an entity of the government of Odisha. The State government has pervasive control over the management of the establishment. He also admitted that the establishment has its own Certified Standing Orders for the functioning of the establishment. The said Standing Order is marked as Ext. 29 on behalf of the workmen. M.W. No.1 also admitted that the said Standing Order is in force since the 24th January 1966, which is also found support from Ext. 29. On perusal of the Standing Order vide Ext. 29, it is found that the said document provides the cardinal rules for the functioning of the establishment. It provides that who is a workman, classification of workmen, how a workman enter and 'work into the establishment, the working conditions, the responsibilities of its officers for strict compliance of the rules mentioned in it etc. So the management ought to produce the details of the service records of the present workmen, which law imposes a responsibility on it and it is presumed that the same are under its custody. The failure to produce the service details of the present workmen as to how they were working, what is their status, how they were enter into the establishment etc., mere taking the plea that no record is available in respect the present workmen, shows the negligent act of the management. But M.W. No.1 during evidence has admitted that the present workmen were working since the 23rd December 1998 but the work orders vide Ext. 1 & 2 issued in favour of the so called labour contractors only on the 29th December 1998. So in such circumstances, an adverse inference is drawn against the management as to the status of the workmen and there is no impediment for this court to draw a presumption that the present workmen were engaged by the management.

15. So far the control over the entry of the present workmen into the establishment are concerned, unless a gate pass is issued, they cannot enter into the premises of the industry and work in an integral part of it, the bagasse yard. The management has to prove that as to how without a gate pass anybody can enter into its premises. Exts. 64 and 65 gate passes, were issued to the workmen Bangali Badtia and Pitabasa Nayak respectively. M.W. No.1 also admitted the issuance of Exts. 64 and 65. The issuance of gate passes proves the instances that the present workmen were also issued gate passes to work in the establishment. Further the work orders issued in favour of different name sake contractors marked vide Exts. 1 to 27 clearly speaks that the present workmen will be worked under the Shift Engineer/ boiler Attendant, which proves that the mangement has effective control over the work of the workmen. It is further found from the evidence of the workmen that the so called contractors never visited their place of work, which shows that the workmen were working under the direct control of the management. In this reliance can be placed on the decision of our own Hon'ble High Court in the case of Paradip Port Trust case (*supra*). The Hon 'ble Court in Para. 11 has held as under;

"11. So far as the effective control is concerned. There are three aspects which are not in dispute. First aspect is entry of the workers inside the e-prohibited area of the Paradip Port Trust. Unless gate passes are issued. No one can enter inside the prohibited are and therefore the management of Paradip Port Trust has control over entry of workers inside the prohibited area. There is evidence on record to show that all these 40 workers were being issued gate passes to

enter inside the prohibited area and only on payment of some fees. Therefore, the management of the Paradip Port Trust has effective control with regard to entry into the prohibited area and there is no dispute that this control was exercised on all the 40 workers. The second aspect of the case is the nature of work executed by the said workers. There is no dispute that these workers have been engaged for loading and unloading of materials inside the Central Store and there is no dispute that stacking of materials inside the Central Store is done by them. So far as loading and unloading are concerned, Shri Padhi, learned senior counsel appearing for the management may be correct in saying that the management may not have control over the same, but so far as stacking of materials inside the Central Store is concerned, the management has some control over the workers as; the workers cannot stack materials where ever they want, The, third aspect is that admittedly the workers were paid wages on certain occasions by the management whenever they were engaged by the management and they have been doing so far past several years.

On consideration of all these materials placed before the Court, I am of the view that not only the management has effective control over the entry of workers into the prohibited area but also has effective control on the movement of workers inside the Central Store. There being, no dispute that the workers are working in the Central Store for past several years / i.e. some workers from the year 1975 and some from 1994 and the Central Store is used for storage of materials belonging' to the Paradip Port Trust, the work is perennial in nature. Now applying the principles laid down by the Apex Court and the Gujarat High Court as quoted above, it is clear that management of Paradip Port Trust has indulged itself in unfair labour practice by engaging 40 workers on casual basis for years without making them permanent."

16. The next contention of the learned AIR of the workmen that all the present workmen were engaged in the industry throughout the year and worked continuously since last 20 years, without any break. He further contended that even though the bagasse - handling work is a seasonal nature, but the workmen were employed in different parts of the industry in the work of cleaning, bottling, sweeping etc. throughout the year, Hence he submitted that the present workmen were working in the industry continuously throughout the year as provided under Section 25B of I.D. Act, 1947. On perusal of the evidence of the workmen, they categorically stated that they were worked for a season in a given year, i.e. during the crushing season. They further stated that during a season, they usually worked for 4 to 6 months. This fact is also found support from the evidence of W.W. 24, 25 & 26, the contractors, who alleged to engage the present workmen for the management. If they were worked throughout the year, there must have same material or evidence to support the said claim. As evident from the work orders vide Exts. 01 to 27, the some were issued for a particular period and for a particular work to be carried out. No contrary evidence or material is produced to establish that the said work orders issued vide Exts. 1 to 27 were runs for a year and for any other work not mentioned in the work orders. If the claim of the workmen to be accepted that they were working throughout the year, there must have materials to support the said claim as to how and from whom they were paid their wages, either from the contractors or from the Management, has not been clarified. Moreover, the evidence of the 2nd party discloses, when some of the workmen examined, deposed before the court that their names were recommended by the Shift Engineer of the management on each year to the contractors. It further found from the

evidence of contractor examined as W.W. 24, who categorically stated that the above contract labourers were working for 5 month in a year. Similarly W.W. 25, another contractor has also stated that the labourers were working for about 120 days in a year. Another contractor examined as W.W.26, has' stated that the industry is running in the crushing season only. So from the evidences and materials, it can be safely concluded that the workmen were 'engaged during crushing season only. The next contention raised by the learned AIR that the experience certificate issued by the contractors in favor of the workmen shows that, they were working continuously since long in the industry. As evident from the certificates issued by different contractors, it is found that the same were issued by the contractors in their personal capacities. Even some of these were issued by the contractors, under whom some of the workmen were not even worked. It is further found from the evidence of W.W.1, W.W. 2, W.W. 3, W.W. 6, W.W. 8 etc., who deposed that they were working on an average during the crushing seasons. Even though the workmen were issued experience certificates issued by the contractors that the present workmen have worked continuously for more than 20 years in the establishment of the 1st Party Management is not acceptable.

17. He further contended that the attendance of the present workmen were entered by the management on the Attendance Registers, maintained by it and when the workmen given evidence by entering into the witness box, the management has ought to produce the said registers and other documents before the court, which are under its possession. Since the managements had failed to produce the said documents under its possession. An adverse inference is to be drawn against it.' In support of his submission he placed his reliance on the decision of Director, Fisheries Terminal Division (*supra*) and submitted that the workmen were completed 240 days of work in a given year. The Hon'ble Apex Court in Director, Fisheries Terminal Division (*supra*) while referring on the decision of R. M. Yellati Vs. the Assistant Executive Engineer AIR 2006 SC 355 in Para. 14 & 15 held as under;

The Hon' ble Apex Court in the case of R. M. Yellati (*Supra*) held Thus ;

(14) Section 25B of the Act defines "continuous service". In terms of sub-section (2) of Section 25B that 'if a workman during a period of twelve calendar months preceding the date with be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The respondent claims he was employed in the year 1985 as a watchman and his services were retrenched in the year 1991 and during the period between 1985 to1991, he had worked for a period of more than 240 days. The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be how well settled. This court in the case of R. M. Yellatty Vs. Assistant Executive Engineer [(2006) 1 SCC 106], has observed :

However, applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment of termination. There will also be no receipt of proof of payment. Thus

in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.”

(15) Applying the principles laid down in the above case by this court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the direction issued by the labour court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three judge bench of this court in the case of *Municipal Corporation, Faridabad Vs. Siri Niwas* [(2004) 8 SCC 195], where it is observed:

A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.

18. Here in this case the Union has never called for any such documents, which are alleged to be under the possession of the management. No attempt was made in this behalf. Mere giving oral evidence by entering into the written box, without any supportive document is not enough to hold that the said documents were under the possession of the management. So the submission of the learned AIR of the Union that an adverse inference is to be drawn against the Management, without laying the foundation as required and as laid down by the Hon'ble Apex Court in the aforesaid decisions. Moreover, from the admission by the workmen that they were worked during crushing seasons only, proves that there was no continuous service throughout the year as contended by the Union.

19. The next contention of the Union is that the management has exploited the present workmen by petting them under the name sake contractors and deprived all the benefits of a regular employee of the management. The learned AR has submitted that although the name sake contractors were changed from time to time, but the workmen are the same and they are working since long for more than 20 years .but they are denied their legitimate claims. He further submitted that the present workmen are deprived of their equal wages and other benefits, as, that of a regular employee is getting, even though they are doing the same and 'equal jobs of the management as

that of a regular employee. By doing so, the management has resorted to Unfair Labour Practice as enumerated in item No.10 of the Schedule V of the Industrial Disputes Act, 1947. Before going to discuss the factual aspects of the case, the observations made by the Hon'ble Apex Court in the case of Sankar Mukhejee (*supra*) regarding practice of employing the contract labourers in establishments, where the Hon'ble Court has held as under;

It is surprising that more than, forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard-Vacuum Refining Co. of India Ltd. V. Its Workmen, [1960] 3 SCR 466 and Catering Cleaners of Southern Railway v. Union of India & Anr., [1987] 1 SCC 700 has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system, which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

20. On perusal of case record, it is found that M.W.No. 1 during cross-examination has stated in Para. 103 that the regular and seasonal employees of the management are getting a monthly Salary of Rs. 25,000 along with other service benefits. In Para. 104 he further stated that the present workmen are getting the minimum wages and safety equipment. In spite of serving the management for a pretty long period, having vast experience in bagasse handling work, the non-regularization of the workmen and putting them under the name sake contractors, without following due procedure and law, by giving less salary ignoring their experience and long service, to that of the regular employees, appears to this court that the management has practicing Unfair Labour Practice as enumerated in item No.10 of the Fifth Schedule of the I.D. Act, 1947. Hence such practice has to be deprecated and the workmen are entitled to their legitimate claim. In this respect, reliance can be placed on the decision of Hon'ble Bombay High Court in the Case of Hindustan Lever Ltd. Vrs. It's Employees Union (*supra*) and our own Hon'ble Court in the Case of Para dip Port Trust (*supra*).

21. The witness for the Management examined as M.W.No. 1 during cross-examination in Para.100 has categorically admitted that some of the so called contract labourers working under the contractor namely Great India Pharmaceutical Pvt. Ltd, have absorbed into permanent roll of the management. So when some contract labuorers were absorbed in the regular roll of the management, why the present workmen cannot be given the same benefit, who are stand in the same or equal footings. He further stated in Para. 66 that there are vacancies in Aska Co-operative Sugar industries, (ACSI), Aska but he cannot say the exact number of said vacancles in the Management. He further stated in Para. 67 that there were 43 appointments (both regular & Seasonal) in the management during last 10 years but during these period about 300 employees have got retired. So from the statement M. W. 1, who is the Office Superintendent of the Management, it can safely be concluded that there are large number of vacancies in the management (ACSI), against the said vacancies, the present workmen can easily be absorbed. Further the bagasse yard is an integral and essential part of ACSI as admitted by M.W.No. 1 in Para. 73 of his evidence. So the requirement of the present workmen in the said yard is inevitable for the smooth functioning of the establishment.

22. Admittedly, ACSI, Aska is a seasonal industry. It is evident that the present workmen are working there as seasonal workmen. Further the Certified Standing Orders of the management, made classification of the employees in seven categories viz., Permanent, Seasonal, Probationers, Badlis, Temporary, Casual, and Apprentices. M.W. 1 further stated in Para. 62 that the total employees' strength of the ACSI is 502. Out of which 229 are regular and 273 are seasonal as approved by government since 1998. M.W. No. 1 during cross-examination in Para. 67 that there were 43 numbers of employees (both regular and seasonal) appointed during last 10 years but during the said period about 300 employees have retired. From this evidence of M.W. No. 1, it is clear that there is large number of vacancies in the establishment of ACSI. It is also admitted fact that the bagasse yard of ACSI is a seasonal plant. It is also admitted fact that the present workmen are working in the bagasse yard seasonally, as found from the evidences of the workmen examined. It is also admitted fact that the present workmen are working there since 1998 and some of them since 2003 and acquired a vast experience in the handling of bagasse yard, irrespective of the change of name sake contractors since long. The submission of the union that the present workmen are working in ACSI throughout year is not acceptable in view of the evidences adduced by the present workmen. On analysis of the facts enumerated above, this court hold that there would have no problem, if the present workmen are to be absorbed in the seasonal establishment of the management considering their long years of experience, against the existing vacancies.

23. In view of the above "discussions, considering the facts and circumstances of the case, relying on the principles laid down by the Hon'ble Apex Court and other Hon'ble different High Courts, this court reached the conclusion that, the present workmen are not the labourers of the name sake contractors, the management has resorted to Unfair Labour Practices by depriving the workmen to their legitimate claims and hence this court thought it proper to regularize the present workmen into seasonal establishment of the management and to provide therewith their service benefits as a seasonal employee of the management. Fact reveals that the workmen named in Sl. No. 01 to 25 have engaged since 1998 and others were engaged since 2003, the fact, has not been denied by the management. The workmen demanded their regularization from the date when they raised the dispute through the Union before the Labour Authorities. From the evidences of the workmen examined, it is found that they have already paid their wages for the work they have already done. The management has contended that the establishment is running in loss. *Per contra*, the Union has submitted that the establishment is running in profit. To buttress the said submission, the workmen have filed a calculation sheet during hearing. On perusal of the said sheet, it is found that the same was prepared by the 2nd party workmen. No supportive document is filed to establish the facts mentioned in calculation sheet and hence the same is not reliable. However, on mere ground that the establishment is running in loss, the present workmen be deprived of their legitimate claims, as advanced by the management, is not acceptable. Further, this is not the intention of this court to put more financial burden on the economic conditions of the Management by giving a direction to regularize the present workmen from the date when the present dispute was raised by the Union. This court thought it proper after considering the facts and circumstances of the case and after delving into the entire gamut of the dispute, if the present workmen be absorbed from the date of this award will be suffice to meet the ends of justice. Accordingly it is ordered.

AWARD

The reference be and the same, is answered on contest against the management. The Management is directed to absorb the present workmen into its regular seasonal establishment from the date of this award i. e, on the 8th December 2023 along with all the consequential service benefits as that of a seasonal employee is getting. This court made it clear that this award will be effective after its publication by the Appropriate Govt. But the benefit of regularization/absorption will be made applicable to the present workme from the date of the award as directed above along with all the service and other benefits. No order as costs.

Dictated and corrected by me.

BIDYADHAR PRUSTY

08-12-2023

Presiding Officer

Labour Court, Jeypore

BIDYADHAR PRUSTY

08-12-2023

Presiding Officer

Labour Court, Jeypore

[No. 1653—LESI-IR-ID-0026/2015-LESI.]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

List of witness examined on behalf of 2nd Party Workmen

- W.W.1. Bengali Badatya.
- W.W.2. Ganesh Nayak
- W.W.3. Pitabas Nahak
- W.W.4. Panchanan Gouda
- W.W.5. Santash Gouda
- W.W.6. Santash Gouda
- W.W.7. Babji Nayak
- W.W.8. Damodar Nayak
- W.W.9. Gadadhar Swain
- W.W.10. Bidesi Gouda
- W.W.11. T. Abhimanya Patro
- W.W.12. Santan Mohanty
- W.W.13. Simanchal Nahak
- W.W.14. Sanjay Biswal
- W.W.15. Dandapani Swain
- W.W.14. T. Santosh Patro
- W.W.15. Sudarsan Jena
- W.W.16. Mochiram Gouda
- W.W.17. Subash Chandra Nahak
- W.W.18. Krushna Chandra Lenka
- W.W.19. Santosh Kumar Nayak
- W.W.20. Ramesh Chandra Nahak
- W.W.21. Babula Kumar Biswal
- W.W.22. Prasant Kumar Swain
- W.W.23. N. Babaji Patra
- W.W.24. Ramesh Chandra Swain
- W.W.25. Sima Patra
- W.W.26. P. Jagannath Patra

List of witness Examined on behalf of 1st Party Management

- M.W.1. Prasant Kumar Kar

List of documents marked as Exhibits for the 2nd Party Workmen

- Ext. 1 Photocopy of work Order No. 4829, Dt. 29-12-98 issued to N. Babaji Patra, Contractor.
- Ext. 2 Photocopy of work Order No. 4831, Dt. 29-12-98 issued to Narasingh Patra, Contractor.
- Ext. 3 Photocopy of work Order Memo. 3824, Dt. 28-12-99 issued to N. Babaji Patra & Others.
- Ext. 4 Photocopy of work Orders No. 6015, Dt. 29-12-2000.
- Ext. 5 Photocopy of work Order No. 3755, Dt. 21-01-2002.

- Ext. 6 Photocopy of work Order No. 3257, Dt. 04-01-2003.
- Ext. 7 Photocopy of work Order No. 2969, Dt. 02-01-2004.
- Ext. 8 Photocopy of work Order No. 2942, Dt. 10-01-2005.
- Ext. 9 Photocopy of work Order No. 2839, Dt. 20-12-2005.
- Ext.10 Photocopy of work Order No. 2676, Dt. 28-12-2006.
- Ext. 11 Photocopy of work Order No. 4542, Dt.02-02-2008.
- Ext.12 Photocopy of work Order Memo No. 3492, Dt. 30-12-2008.
- Ext. 13 Photocopy of work Order No. 543, Dt. 14-05-2009.
- Ext. 14 Photocopy of work Order No. 4918, Dt. 28-02-2008.
- Ext. 15 Photocopy of work Order No. 3612, Dt. 20-12-2010.
- Ext. 16 Photocopy of work Order No. 3885, Dt. 19-12-2011.
- Ext. 17 Photocopy of work Order No. 3194, Dt. 20-12-2012.
- Ext. 18 Photocopy of work Order No. 2844, Dt. 03-01-2014.
- Ext.19 Photocopy of work Order No. 4011, Dt. 20-02-2013.
- Ext. 20 Photocopy of work Order No. 3557, Dt. 19-01-2013.
- Ext. 21 Photocopy of work Order No. 2538, Dt. 31-10-2012.
- Ext. 22 Photocopy of work Order No. 2981, Dt. 20-01-2014.
- Ext. 23 Photocopy of work Order No. 3612, Dt. 20-12-2010.
- Ext. 24 Photocopy of work Order No. 49, Dt. 04-04-2013.
- Ext. 25 Photocopy of work Order No. 3094, Dt. 25-01-2014.
- Ext. 26 Photocopy of work Order No. 3186, Dt. 20-12-2012.
- Ext. 27 Photocopy of work Order No. 2645, Dt. 25-12-2014.
- Ext. 28 Photocopy of memorandum of settlement Dt.15-12-2000.
- Ext. 29 Photocopy of certified standing order for claim 24-02-2006.
- Ext. 30 Original Certified issued by Narasingh Patra Contractor.
- Ext. 31 Original Certified issued by Narasingh Patra Contractor.
- Ext. 31/a Signature of Narasingh Patra vide Ext. 31.
- Ext. 32 Original Certified issued by Babula Kumar Biswal in Ext. 32.
- Ext. 32/a Signature of Babula Kumar Biswal in Ext. 32.
- Ext. 33 Original Certificate issued by Prasanta Kumar Swain,
- Ext. 33/a Signature of Prasanta Kumar Biswal in Ext. 33.
- Ext. 34 Original Certificate issued by Dayanidhi Nahak, Contractor.
- Ext. 34/a Signature of Dayanidhi Nahak in Ext. 34.
- Ext. 35 Original Certificate issued by N. Babaji Patra in Ext. 35.
- Ext. 35/a Signature of N. Babaji Patra in Ext. 35
- Ext. 36 Original Certificate issued by Ramesh Chandra Swain Contractor.
- Ext. 36/a Signature of Shri Ramesh Chandra Swain in Ext. 36.
- Ext. 37 Original Certificate of Shri Ram Chandra Dora, Contractor.

- Ext. 37/a Signature of Rama Chandra Dora in Ext. 37.
- Ext. 38 Original Certificate issued by Rama Chandra Swain.
- Ext. 38/a Signature of Shri Ramesh Chandra Swain in Ext. 38.
- Ext. 39 Original Certificate issued by Trinath Mahunta, Contractor.
- Ext. 39/a Signature of Trinath Mahunta in Ext. 39.
- Ext. 40 Original Certificate issued by Tuna Gouda, Contractor.
- Ext. 40/a Signature of Tuna Gouda in Ext. 40.
- Ext. 41 Original Certificate issued by Nilamani Nayak, Contractor.
- Ext. 41/a Signature of Nilamani Nayak in Ext. 41.
- Ext. 42 Original Certificate issued by Rama Chandra Dora, Operator.
- Ext. 42/a Signature of Rama Chandra Dora in Ext. 42.
- Ext. 43 Original Certificate issued by Dilip Kumar Swain.
- Ext. 43/a Signature of Dillip Kumar Swain in Ext. 43.
- Ext. 44 Original Certificate issued by Dillip Nahak.
- Ext. 44/a Signature of Dillip Nahak in Ext. 44.
- Ext. 45 Original Certificate issued by Jhunu Swain, Contractor.
- Ext. 5/a Signature of Jhunu Swain in Ext. 45.
- Ext. 46 Original Certificate issued by P .K. Swain, Contractor.
- Ext. 46/a Signature of Shri P. K. Swain in Ext. 46.
- Ext. 47 Original Certificate issued by P. K. Swain, Contractor.
- Ext. 47/a Signature of Shri P. K. Swain in Ext. 47.
- Ext. 48 Photocopy of work Order Dt. 01-05-2009.
- Ext. 49 Copy of Certificate Dt. 01-09-2008.
- Ext. 49/a Signature of Shri R.C. Swain in Ext. 49.
- Ext. 50 Copy of Certificate Dt. 01-07-2009.
- Ext. 50/a Signature of Shri R.C. Swain in Ext. 50.
- Ext. 51 Service Certificate of contractor of N. Babaji Patra.
- Ext. 51/a Signature of Shri N. Babaji Patra in Ext. 51
- Ext. 51/b Signature of P. Jagannath Patra in Ext. 51
- Ext. 52 Original Certificate issued by Kalu Charan Nayak, Contractor.
- Ext. 52/a Signature of Kalu Charan Nayak, Contractor in Ext. 52
- Ext. 52/b Signature of P. Jagannath Patra, in Ext. 52
- Ext. 53 Original Certificate of Jhunu Swain, Contractor.
- Ext. 53/a Original Signature of Jhunu Swain, Contractor.
- Ext. 53/b Original Signature of Bidasi Gouda.
- Ext. 54 Original Certificate of Dayanidhi Nahak, Contractor.
- Ext. 54/a Original Certificate of Dayanidhi Nahak.
- Ext. 54/b Original Signature of Santosh Sethi.
- Ext. 55 Original Service Certificate of Shri Ram Chandra Dora, Contractor.

- Ext. 56 Original Service Certificate of Shri Ram Chandra Dora, Contractor.
- Ext. 57 Original Certificate of Shri Ram Chandra Dora, Contractor.
- Ext. 58 Original Certificate of Shri Badrinarayan Panda, Contractor.
- Ext. 59 Original Certificate issued by Rama Chandra Dora, Contractor.
- Ext. 60 Original Certificate issued by N Babaji Patra, Contractor.
- Ext. 61 Original Certificate of Shri Kalu Charan Nayak, Contractor.
- Ext. 62 Xerox copy of work Order Memo No. 3867, Dt. 20-02-2023 of managing Director of O.P.
- Ext. 63 Copy of Latter No. 1691, Dt. 16-09-2014 Issued by M.D. ACSI to DLO, Berhampur.
- Ext. 64 Copy of Identity card of Shri Bansali Bagartya.
- Ext. 65 Copy of Identity card of Shri Pitabas Nayak.

List of documents marked as Exhibits for the 1st Party Management.

- Ext. A Photocopy of Licence No. 806/2014, Dt. 29-12-2014 of Contractor Susanta Kumar Rout.
- Ext. B Photocopy of Licence No. 804, Dt. 23-12-2014 of Contractor Tukuna Nahak.
- Ext. C Photocopy of Licence No. 861, Dt. 18-3-2016 of Contractor Dayanidhi Nahak.
- Ext. D Photocopy of Licence No. 762, Dt. 8-5-14 of Contractor P. K. Swain.
- Ext. E Photocopy of License No. 349/18-1-2005 of Contractor R.C.Swain.
- Ext. F Photocopy of Licence No. 35/03, Dt. 20-10-03
- Ext. G Photocopy of Licence No. 680/2012, Dt. 26-10-2012.
- Ext. H Photocopy of Licence No. 693/2013, Dt. of Contractor, Satrugan Sethi.
- Ext. J Photocopy of Licence No. 665/3.9.12 of Contractor, Kalu Charan Naik.
- Ext. K Photocopy of the work Order issued in favour of N.Babaji Patra.
- Ext. L Photocopy of work Order issued in favour of Narasingh Patra.
- Ext. M Photocopy of work Order issued in favour of Babula Kumar Biswal.
- Ext. N Photocopy of work Order issued in favour of R. C. Swain.
- Ext. P Photocopy of work Order issued in favour of Narasingh Patra.
- Ext. Q Photocopy of work Order issued in favour of Narasingh Patra.
- Ext. R Photocopy of work Order issued in favour of Narasingh Patra.
- Ext. S Photocopy of work Order issued in favour of Narasingh Patra.
- Ext. T Photocopy of work Order issued in favour of R. C. Swain.
- Ext. V Photocopy of work Order issued in favour of R. C. Swain.
- Ext. W Photocopy of work Order issued in favour of K. C. Naik.
- Ext. Y Photocopy of work Order issued in favour of P. K. Swain.
- Ext. Z Photocopy of work Order issued in favour of T. Abimanyu Patra
- Ext. AA Photocopy of work Order issued in favour of Govinda Nayak.